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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN: 3206-AM14

Collection by Offset From Indebted Government Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations to eliminate the 10-year statute of limitations on collection of debt by administrative offset, which includes centralized salary offset. The final regulations conform with an amendment made by the Food, Conservation, and Energy Act of 2008. This change would authorize the offset of nontax payments (via salary offset) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent. OPM is also making several technical changes to be consistent with the Department of the Treasury and the Department of Justice Federal Claims Collection Standards and the Department of the Treasury salary offset regulations.

DATES: *Effective date:* These regulations are effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tameka Gillis by telephone at (202) 606-2858; by fax at (202) 606-0824; or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On May 2, 2011, the U.S. Office of Personnel Management (OPM) issued proposed regulations (76 FR 24406) to eliminate the 10-year statute of limitations on collection of debt by administrative offset, which includes centralized salary

offset. The proposed regulations conformed with an amendment to 31 U.S.C. 3716(e) made by section 14219 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246 (122 Stat. 1651)) that became effective on June 18, 2008, to authorize the offset of nontax payments (via salary offset) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent.

The 60-day comment period for the proposed regulations ended July 1, 2011. OPM received comments from one agency that concurred with changes in the proposed regulations. We also received comments from two labor organizations and two individuals. This supplementary information addresses these comments.

One labor organization appreciated that the proposed regulations were designed to conform to the statutory change authorizing the offset of nontax payments to collect Federal debt without time limitations. However, the labor organization believed the proposed regulations do not give sufficient clarification on the requirement for the creditor agency to notify employees about such a longstanding overdue debt. We agree. We have revised 5 CFR 550.1104(d) to specify the requirements for notification of employees for debts outstanding more than 10 years on or before June 11, 2009; see also the Department of the Treasury's salary offset regulations at 31 CFR 285.7(d)(7) for additional notification requirements.

The labor organization also questioned whether OPM should amend its own internal agency salary offset regulations at 5 CFR part 179, subpart B, which contains the obsolete 10-year limitation provision. This final regulation does not amend OPM's internal salary offset regulations at 5 CFR part 179, subpart B. Under 5 U.S.C. 5514 and 5 CFR 550.1104, each covered agency must issue regulations, subject to OPM approval, governing its internal procedures for collecting a debt by salary offset. OPM's internal salary offset regulations, as

well as the internal salary offset regulations issued by other agencies, must be amended to reflect the changes made by these final regulations on or after the effective date of these regulations.

OPM considers amendments to agency internal salary offset regulations in this case to be conforming changes. Agencies need not submit these conforming changes to OPM for approval prior to publication.

A different labor organization and an individual opposed the removal of the 10-year limit from the salary offset regulations. The labor organization stated the proposed regulations would allow agencies to be less accountable for clearing up mistakes in a timely fashion and expressed concerns that in some cases they could allow agencies to retaliate against employees and their exclusive representatives. The labor organization believed that the statute of limitations governing debt collection should be based upon the nature of actions of the agencies and the employees involved, and that, where an employee in good faith earned compensation that is later judged to be erroneously paid, there should be no more than a 6-year statute of limitations, consistent with the time limit under the Back Pay Act. The individual stated that there must be boundaries on salary offset rules and the Government should move swiftly to collect debt within a reasonable period of time.

OPM is not changing the regulations in response to these comments. Elimination of the 10-year limitation in OPM's regulations to authorize the offset of nontax payments (via salary offset) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent is required by changes made to 31 U.S.C. 3716(e) by the Food, Conservation, and Energy Act of 2008. OPM has no authority to establish a time limitation under regulations for collecting a debt via salary offset that is inconsistent with the law.

Another individual questioned the legality of the changes to § 550.1104 regarding deductions of greater than 15 percent of the employee's disposable pay, as it related to employee due process rights. We are not revising the regulations in response to this comment. Employees will continue to have notice and due process rights as provided in 5 U.S.C. 5514 and 5 CFR 550.1104 if a court orders deductions greater than 15 percent of pay.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Katherine Archuleta,
Director.

Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550— PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

AUTHORITY: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2-1 of E.O. 12107.

2. In § 550.1102, revise paragraph (b)(1) and add a new paragraph (b)(3) to read as follows:

§ 550.1102 Scope.

* * * * *

(b) * * *

(1) *Excluded debts.* The procedures contained in this subpart do not apply to--

(i) Debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(ii) Debts arising under the tariff laws of the United States;

(iii) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(iv) Any other debt excluded by the FCCS or 31 CFR part 285.

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(3) *Compromise, suspension, or termination of collection actions.* This subpart does not preclude the compromise, suspension, or termination of collection actions, where appropriate, as provided in the FCCS (31 CFR 900.4) or the use of alternative dispute resolution methods if they are not inconsistent with agency-specific laws and regulations.

3. In § 550.1103, revise the definition of “FCCS” to read as follows:

§ 550.1103 Definitions.

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FCCS means the Federal Claims Collections Standards published in 31 CFR parts 900 through 904.

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4. In § 550.1104, revise paragraph (d) introductory text and paragraphs (d)(3), (i), and (j) to read as follows:

§ 550.1104 Agency regulations.

* * * * *

(d) *Notification before deductions begin.* Provide for notification before deductions begin. Except as provided in paragraph (c) of this section, deductions under the authority of 5 U.S.C. 5514 must not be made unless the head of the creditor agency (or authorized designee) provides the employee a written notice at least 30 days before any deduction begins. (For debts outstanding more than 10 years on or before June 11, 2009, see also 31 CFR 285.7(d) for additional notification requirements.) The written notice must state at a minimum:

* * * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay except as provided in paragraph (i) of this section) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

(i) *Limitation on amount of deductions.* Prescribe the limitations on the amount of the deduction. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see the FCCS at 31 CFR 901.8). However,

the amount deducted for any period under this subpart may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court under section 124 of Public Law 97-276 (96 Stat.1195).

(j) *Duration of deductions.* Prescribe the duration of deductions under this subpart.

Ordinarily, debts must be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay (or other applicable limitation as provided in paragraph (i) of this section) for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraphs (1) and (m) of this section.

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5. Revise § 550.1106 to read as follows:

§ 550.1106 Time limit on collection of debts.

Agencies may initiate salary offset to collect a debt without time limitations on any debt outstanding after the Government's right to collect the debt first accrued. (See § 550.1108 for requirement when debts are delinquent over 180 days.)

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